

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles REPROVAL			PUBLIC MATTER
Counsel For The State Bar Adriana M. Burger Deputy Trial Counsel 1149 S. Hill St. 10th floor Los Angeles, CA 90015 Bar # 92534	Case Number(s): 11-C-13383	For Court use only <div style="text-align: center;"> FILED JUL 09 2012 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>	
In Pro Per Respondent Michael Alan Brush 815 Moraga Drive Los Angeles, CA 90049 Bar # 46576	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: MICHAEL ALAN BRUSH Bar # 46576 A Member of the State Bar of California (Respondent)			

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 26, 1970.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



Effective January 1, 2011)



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
 - ☐ Case ineligible for costs (private reproof).
 - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.
- (9) The parties understand that:
- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) ☒ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline [see standard 1.2(f)]**
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."

- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. Please see Attachment titled "Aggravation" on page no. 8.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Please see attachment at page 8 titled "Mitigation"

D. Discipline:

- (1) ☐ **Private reproof (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) ☒ **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of two (2) years.
- (2) ☒ During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover

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less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reprobation.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☒ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.
- ☒ No MPRE recommended. Reason: Please see attachment under "MPRE" page 8.
- (11) ☐ The following conditions are attached hereto and incorporated:
- | | |
|--|--|
| <input checked="" type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions - See page 10 |

F. Other Conditions Negotiated by the Parties:

Please see attachment page 10 titled Restitution.

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In the Matter of:
MICHAEL ALAN BRUSH

Case Number(s):
11-C-13383

Substance Abuse Conditions

- a. ☒ Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. ☒ Respondent must attend at least 4 meetings per month of:
- ☒ Alcoholics Anonymous
 - ☐ Narcotics Anonymous
 - ☐ The Other Bar
 - ☒ Other program

Respondent shall attend at least four (4) meetings per month of an abstinence-based self-help group of his own choosing, including inter alia, Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T, S.O.S. Other self-help maintenance programs are acceptable if they include: (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. See O'Conner v. California (1994), 855 F. Supp. 303 (No first amendment violation where probationer given choice between AA and secular program.) The program called "Moderation Management" is not acceptable because it allows the participant to continue consuming alcohol.

Before Respondent attends the first self help group meeting, he shall contact the Office of Probation and obtain approval for the program that he has selected. Thereafter, on a quarterly basis with his quarterly and final written reports, Respondent shall provide documentary proof of attendance at the meetings of the approved program to the Office of Probation, in a form acceptable to the Office of Probation.

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. ☐ Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. ☐ Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MICHAEL ALAN BRUSH, Member No. 46576

CASE NUMBER(S): 11-C-13383

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 11-C-13383 RAH (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On November 15, 2011, Respondent was convicted of violating California Vehicle Code section 23152, subdivision (b), driving with a blood alcohol reading of .08% or more.
3. On May 3, 2012, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: whether the facts and circumstances surrounding the conviction violation involved misconduct warranting discipline.

FACTS:

4. On the evening of September 30, 2010, the Respondent drove his automobile eastbound on Sunset Blvd. near Appleton Dr. in the City of Los Angeles. He collided with the curb, ran off the roadway and continued in an eastbound direction. Respondent drove into a lamp standard, causing damage to the standard.
5. Two Los Angeles Police Department officers immediately responded to the incident and observed the Respondent standing near the damaged automobile. The automobile had significant body damage.
6. The officers observed that Respondent had objective physical symptoms of driving under the influence, including an odor of alcohol on the breath. Respondent told the officers that he had been driving the automobile and accidentally collided with the light pole.
7. The officers arrested and then transported Respondent to the police station. At the station the officers requested that Respondent submit to a field sobriety test which consisted of performing various simple tasks to determine Respondent's status. Respondent submitted to a field sobriety test and failed. The officers then offered Respondent the choice of three laboratory tests to obtain a blood alcohol level. Respondent agreed to take the breath test and the result was .13 percent blood alcohol level.

8. Upon conclusion of the breath test, observation of other objective physical symptoms, Respondent's failure of passing the field sobriety test and other objective findings, the officers booked Respondent for willfully and unlawfully driving his vehicle while under the influence of alcohol.

9. The Los Angeles City Attorney's Office charged Respondent with violations of Vehicle Code sections 23152 (A) and (B), driving under the influence and driving with 0.08 percent or more, by weight, of alcohol in his blood.

10. On November 15, 2011, Respondent pled guilty to violating Vehicle Code section 23152(B), driving with a 0.08 percent or more, by weight, of alcohol in his blood. The other count was dismissed.

11. On November 15, 2012, Respondent was adjudged guilty of violating VC 23152 (b) and sentenced to 60 months of summary probation, 96 hours of county jail incarceration, fined \$460, required to enroll in an SB38 program, and other conditions of probation.

CONCLUSIONS OF LAW:

The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

AGGRAVATING AND MITIGATING CIRCUMSTANCES:

Aggravation:

Harm: Respondent's conduct which gave rise to this conviction matter, caused property damage. While driving with a blood alcohol level above .08 percent, Respondent caused his automobile to collide with a light standard.

Mitigation:

No Prior Discipline: Although the Respondent's misconduct is deemed serious, Respondent has been practicing law for over forty years without any prior State Bar discipline. Respondent has cooperated with the State Bar in entering into this full stipulation to resolve all issues in this matter. (See *In the Matter of Spaith* (Review Dept. 1996) 3 CSBCR 511, 521).

MPRE:

The protection of the public and the interests of the Respondent do not require passage of the MPRE in this case. See *In the Matter of Respondent G* (Review Dept. 1992), 2 Cal. State Bar Ct. Rptr. 181.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was June 15, 2012.

AUTHORITIES SUPPORTING DISCIPLINE.

In re Kelley (1990) 52 Cal. 3d 487: Kelley was convicted of a second driving under the influence of alcohol (V.C. 23152 (a)) and was in violation of the criminal probation arising from the first conviction. The Supreme Court found that Kelley had not committed a crime of moral turpitude and ruled that the facts and circumstances of the underlying conduct and probation violation would be other conduct warranting discipline and issued its order for a public reproof. Similarly, Respondent was convicted of driving with a blood alcohol level above .08 percent, a different subsection of V.C. 23152, but part of the same code violation commonly known as DUI. The Supreme Court found that its inquiry into the possible grounds for discipline did not end with the statutory language of Bus & P C §§ 6101 and 6106. Although the review department found petitioner's conduct did not involve moral turpitude, it concluded the conduct constituted 'other misconduct warranting discipline. The "other misconduct warranting discipline" standard permits discipline of attorneys for misconduct not amounting to moral turpitude as an exercise of the State Bar's inherent power to control the practice of law to protect the profession and the public. The Respondent in this matter has a similar conviction for an alcohol related driving offense and forty years of practice without any prior discipline. The facts and circumstances of this matter do not establish moral turpitude under the *Kelley* decision and appear to be consistent with the mitigating features that the State Bar is mandated to evaluate and which is described in the *Kelley* decision. A public reproof with the below described conditions is intended to serve the purpose of regulating the profession and public protection.

STANDARDS:

To determine the appropriate level of discipline, the standards provide guidance. *Drociak v. State Bar* (1991) 52 Cal.3d 1085; *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119. A disciplinary recommendation must be consistent with the discipline in similar proceedings. See *Snyder v. State Bar* (1990) 49 Cal.3d 1302. Also, the recommended discipline must rest upon a balanced consideration of relevant factors. *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119.

3.4

CONVICTION OF A CRIME NOT INVOLVING MORAL TURPITUDE BUT INVOLVING OTHER MISCONDUCT WARRANTING DISCIPLINE

Final conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member. The Review Department has expressed that this matter be evaluated under this standard as a matter that does not involve moral turpitude but involves other misconduct. It is proper to determine level of discipline based upon this standard as provided in the above referenced *Kelley* decision.

2.10

OFFENSE INVOLVING A VIOLATION OF ANY PROVISION OF THE BUSINESS AND PROFESSIONS CODE NOT SPECIFIED IN ANY OTHER STANDARD OR A WILFUL VIOLATION OF A RULE OF PROFESSIONAL CONDUCT NOT SPECIFIED IN ANY OTHER STANDARD

Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

FINANCIAL CONDITIONS:**RESTITUTION**

Respondent acknowledges that he caused property damages to the light standard on Sunset Blvd. in the city of Los Angeles and is liable for any damages of the light standard. Respondent shall contact the City of Los Angeles Department of Streets and/ or the City of Los Angeles Department of Water and Power in order to arrange for his restitution payment for the damages caused by Respondent's misconduct; shall pay the damages owed pursuant to the disciplinary order resulting from this stipulation; and shall provide satisfactory proof of payment to the Office of Probation not later than one (1) year from the effective date of the disciplinary order resulting from this stipulation. If Respondent's insurance carrier is deemed responsible for restitution, proof of payment made for the benefit of Respondent through Respondent's insurance carrier will satisfy this requirement.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of Jun 11, 2012, the prosecution costs in this matter are \$ 2,287.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of:
MICHAEL ALAN BRUSH

Case Number(s):
11-C-13383

REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☐ All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

7/3/12

Judge of the State Bar Court

RICHARD A. HONN

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 9, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

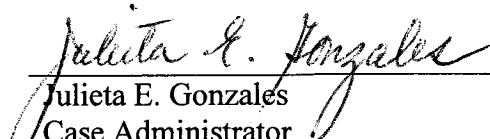
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL ALAN BRUSH ESQ
BRUSH & SACKS
815 MORAGA DR
BEL-AIR, CA 90049

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Adriana M. Burger, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 9, 2012.



Julieta E. Gonzales
Case Administrator
State Bar Court